

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DARRELL E. ABBOTT,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of  
Social Security,

Defendant.

CASE NO. C11-5616BHS

ORDER DECLINING TO ADOPT  
REPORT AND  
RECOMMENDATION AND  
REMANDING ACTION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 19), Plaintiff Darrell E. Abbott’s (“Abbott”) objections to the R&R (Dkt. 20), and Defendant Michael J. Astrue, Commissioner of Social Security’s (“Commissioner”) response (Dkt. 21).

**I. PROCEDURAL HISTORY**

On August 24, 2012, Abbott filed a complaint requesting judicial review of an administrative law judge’s (“ALJ”) decision that she was not disabled. Dkt. 3. On June 14, 2012, Judge Strombom issued the R&R recommending that the Court affirm the ALJ’s decision that Abbott is not disabled. Dkt. 19. On June 28, 2012, Abbott filed

1 objections to the R&R. Dkt. 20. On July 9, 2012, the Commissioner responded. Dkt.  
2 21.

## 3 II. DISCUSSION

4 A district judge “shall make a de novo determination of those portions of the  
5 report or specified proposed findings or recommendations to which objection is made”  
6 and “may accept, reject, or modify, in whole or in part, the findings or recommendations  
7 made by the magistrate judge.” 28 U.S.C. § 636 (b)(1)(B).

8 Abbott argues that the ALJ erred in evaluating the medical evidence by not  
9 providing specific and legitimate reasons for rejecting the opinion of Abbott’s treating  
10 physician, Dr. Ellis Johnson, M.D. (“Dr. Johnson”). Dkt. 20 at 2-8. In addition, Abbott  
11 contends that the additional testing evidence offered by John C. Fowler, M.D. (“Dr.  
12 Fowler”) provided to the Appeals Council two weeks after the ALJ’s decision, supplies  
13 further objective evidentiary support for Dr. Johnson’s opinions. *Id.* at 8-9. Abbott  
14 argues, in the alternative to the Court’s reversing the ALJ’s decision on other grounds,  
15 that the Court should remand the case to the ALJ to consider the additional testing  
16 evidence offered by Dr. Fowler. *Id.* at 12. Finally, Abbott alleges that the ALJ erred by  
17 giving “significant weight” to the opinion of a state agency non-physician, Doreen  
18 Clement, that was “affirmed” without explanation by a state agency physician, Guthrie  
19 Turner, M.D.

20 As an initial matter, the Court concludes that this action should be remanded to the  
21 ALJ to consider the additional testing evidence offered by Dr. Fowler, and made part of  
22 the record by the Appeals Council, as such evidence may have an effect on the ALJ’s

1 consideration of the opinion of Dr. Johnson, Abbott's treating physician, which is the  
2 main subject of this appeal.

3 **III. ORDER**

4 Therefore, having considered the R&R, Abbott's objections, and the remaining  
5 record, the Court hereby **DECLINES to adopt** the R&R (Dkt. 19) to the extent that this  
6 action is **REMANDED** to the ALJ for consideration of the additional evidence as  
7 discussed above.

8 Dated this 18th day of September, 2012.

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11 **BENJAMIN H. SETTLE**  
12 United States District Judge  
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